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3 **BEFORE THE PERSONNEL APPEALS BOARD**
4 **STATE OF WASHINGTON**

5 W. TIMM FREDRICKSON,

6 Appellant,

7 v.

8 DEPARTMENT OF SOCIAL AND
9 HEALTH SERVICES,

10 Respondent.

NO. SUSP-00-0022

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER OF THE BOARD

11 **I. INTRODUCTION**

12 1.1 **Hearing.** This appeal came on for hearing as a request and recommendation from the
13 parties to the Personnel Appeals Board.

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15 1.2 **Appearances.** Appellant, W. Timm Fredrickson, was represented by Edward Earl
16 Younglove, III. Respondent, Department of Social and Health Services, was represented by
17 Patricia A. Thompson, Assistant Attorney General.

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19 1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a seven-
20 calendar-day suspension for Appellant's failure to submit to his supervisor overdue monthly
21 reports for the months of September through December 1999 as directed.

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23 **II. FINDINGS OF FACT**

24 2.1 Appellant Timm Fredrickson is a Psychologist 5 and permanent employee for
25 Respondent Department of Social and Health Services with Eastern State Hospital (ESH).
26 Appellant and Respondent are subject to Chapter 41.06 and 41.64 RCW and the rules

1 promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the
2 Personnel Appeals Board on April 24, 2000.

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4 2.2 By letter dated March 29, 2000, and amended April 14, 2000, Jan Gregg, Chief Executive
5 Officer for ESH, informed Appellant of his seven-calendar-day suspension for neglect of duty,
6 insubordination and willfully violating ESH policy by failing to submit to his supervisor overdue
7 monthly reports as directed on January 21 and 28, 2000, for the months of September through
8 December 1999.

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10 2.3 Appellant began his employment with the State of Washington in 1977. Appellant has a
11 prior history of a written counseling on April 27, 1999, a letter of reprimand on July 16, 1999,
12 and a finding of misconduct for a similar infraction in December 1999 and consistent efforts by
13 his supervisor to improve the Appellant's behavior as shown in performance evaluations
14 (covering periods 8/98 – 8/99, 8/97 – 8/98, 8/96 – 8/97, and 8/95 – 8/96).

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16 2.4 The facts of this case are not in dispute. On January 13, 2000, Appellant's supervisor,
17 Dr. Johnny Williams, Ph.D., directed the Appellant to submit one overdue monthly report per
18 week beginning January 21, 2000, for the months of September through December 1999. As of
19 February 3, 2000, none had been submitted and/or received by Dr. Williams. Appellant was
20 aware of ESH Psychology Department Procedure 2.5 requiring submission of the said reports not
21 later than the fifth working day of the month following the activity reported.

22
23 2.5 Jan Gregg, CEO for ESH, was the appointing authority. In assessing what level of
24 discipline to impose, Ms. Gregg considered Dr. Fredrickson's prior disciplinary actions, outlined
25 above, and the negative impact that failure to timely submit these reports has on the staff of the
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1 Psychology Department, the Appellant's supervisor, ESH, the Mental Health Division, and
2 patient care. When these reports are not timely submitted, then data cannot be compiled into the
3 monthly and quarterly reports that are needed to make proper judgments about psychologist
4 usage and availability. Ms. Gregg saw no mitigating reasons for Dr. Fredrickson to not comply
5 with this directive and complete the reports in question. Ms. Gregg concluded that a seven-
6 calendar-day suspension was the appropriate sanction, being the least disciplinary action
7 available and consistent with the Fair Labor Standards Act.

8 9 **III. ARGUMENTS OF THE PARTIES**

10 3.1 Respondent argues that Appellant violated ESH Psychology Procedure 2.5. He failed to
11 perform his duties as set forth by this policy and was insubordinate by failing to follow the
12 directive received from his supervisor to complete these reports as directed on January 13, 2000.
13 Respondent argues that Appellant had knowledge of this policy and procedure as to preparing
14 and submitting the psychology reports. Respondent also argues that Appellant had knowledge of
15 the directive from his supervisor on January 13, 2000, and failed to follow it. Respondent argues
16 that a one-week suspension is appropriate.

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18 3.2 Appellant does not dispute the charge that he failed to follow the directive from his
19 supervisor and did not submit the required psychology reports as directed. Appellant knew and
20 was aware of ESH Psychology Procedure 2.5. Appellant contends that because of other duties
21 he was not able to comply with this directive. Respondent argues that some discipline is
22 appropriate, but that a seven-calendar-day suspension is excessive.

IV. CONCLUSIONS OF LAW

4.1 The personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by a preponderance of the credible evidence that Appellant committed the offenses as set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social and Health Service, PAB No. D86-119 (1987).

4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v. Dep't of Social and Health Services, PAB No. D94-025 (1995).

4.5 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. Skaalheim v. Dep't of Social and Health Services, PAB No. D93-053 (1994).

1 4.6 Appellant was given a lawful directive on January 13, 2000, to complete psychology
2 reports within a set timeframe, he failed to comply with this directive, and he knew of the ESH
3 Psychology Policy 2.5 regarding the submitting of said reports. Respondent has met its burden
4 of proof that Appellant neglected his duty, was insubordinate, and violated ESH Psychology
5 Procedure 2.5 when he failed to complete the psychology reports as directed on January 13,
6 2000. However, we conclude that a seven-calendar-day suspension is too severe. We find that a
7 one-day suspension is sufficient to prevent recurrence, to deter others from similar misconduct,
8 and to maintain the integrity of ESH and its mission. Therefore, the disciplinary sanction of a
9 seven-calendar-day suspension should be modified to a one-day suspension.

10 **V. ORDER**

11 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of W. Timm
12 Fredrickson is modified to a one-day suspension.

13 DATED this _____ day of _____, 2001.

14 WASHINGTON STATE PERSONNEL APPEALS BOARD

15 _____
16 Walter T. Hubbard, Chair

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18 Gerald L. Morgen, Vice Chair

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20 Leana D. Lamb, Member
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